IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 15438 of 2007(K)

PETITIONERS:
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1. BARBARA, AGED 55 YEARS, W/O.P.X.FRANCIS, HOUSE WIFE, RESIDING AT X/167, CHERIAKADAVU, PALLURUTHY VILLAGE, COCHIN TALUK.

2. P.X.FRANCIS, AGED 60 YEARS, S/O.XAVIER, RESIDING AT X/167, CHERIKADAVU, PALLURUTHY VILLAGE, COCHIN TALUK.

BY ADV. SRI.VIJU THOMAS
SMT.M.MEENA JOHN

RESPONDENTS:

CHELLANAM PANCHAYATH, REPRESENTED BY ITS SECRETARY.

ADDL.R2 TAHSILDAR, TALUK OFFICE, KOCHI.

ADDL.R3 JOY, AGED ABOUT 44 YEARS, S/O. RAPAHEL, KANNETH HOUSE, CHERIAKADAVU, KANNAMALI P.O., PALLURUTHY VILLAGE, KOCHI.

ADDL.R4 TREESA LORENZ, AGED ABOUT 38 YEARS, W/O. LORENZ, CHERUKKATTU HOUSE, CHERIAKADAVU, KANNAMALI P.O., PALLURUTHY VILLAGE, KOCHI.

(ADDL.R2 IS IMPLEADED AS PER ORDER DATED 7.6.2007 IN IA NO.7491/07).

ADDL.R3 AND R4 ARE IMPLEADED AS PER ORDER DATED 24.7.2007 IN I.A. NO.7708/07).

BY ADV. SRI.PEEYUS .A.KOTTAM

R2 BY GOVERNMENT PLEADER (SHRI BASANTH BALAJI)

R3 BY NIDHI BALACHANDRAN
SRI.T.A.GEORGE JOSEPH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C). NO. 15438 OF 2007 K

PETITIONERS' EXHIBITS:

EXT.P1	**TRUE COPY OF THE ASSIGNMENT DEED NO.1143/79 DATED 24.3.79.**
EXT.P2	**TRUE COPY OF THE ASSIGNMENT DEED NO.1068/95 DATED 18.2.95.**
EXT.P3	**A ROUGH SKETCH SHOWING THE PROPERTY OF THE PETITIONERS AND THE PATHWAY.**
EXT.P4	**TRUE COPY OF THE DECREE DATED 29.9.04 IN OS NO.591/03 OF THE ADDL. MUNSIFF COURT, KOCHI.**
EXT.P5	**TRUE COPY OF THE REPORT B1-13648/03 DATED 20.1.04 SUBMITTED BY THE TAHSILDAR, KOCHI TO R.D.O., KOCHI.**
EXT.P6	**TRUE COPY OF THE JUDGMENT DATED 28.9.2005 IN W.P.(C) NO.36993/04 OF THIS HONOURABLE COURT.**
EXT.P7	**TRUE COPY OF THE PETITION DATED 13.10.2005 FILED BY THE 1ST PETITIONER BEFORE THE RESPONDENT.**
EXT.P8	**TRUE COPY OF THE ORDER DATED 2.4.2007 IN W.P.(C). NO.11255/07 OF THIS HONOURABLE COURT.**
EXT.P9	**TRUE COPY OF THE NOTICE NO.A4.691/03 DATED 14/5/07 ISSUED TO THE PETITIONERS BY THE RESPONDENT.**

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 15438 OF 2007 K

Dated this the 2nd August, 2007

JUDGMENT

Petitioners challenge Ext.P9. Case of the petitioners, in brief, is as follows:

Petitioners are husband and wife. First petitioner is the owner in possession of 6.31 cents of land in Survey No.1301/1 of Palluruthy Village as evident from Ext.P1 Assignment Deed. Second petitioner is the husband of the first petitioner and he purchased one cent of land adjoining the aforesaid property of first petitioner as per Ext.P2. There is approximately a 6 links wide private pathway on the northern side of their property which ends in Chellanam - Pandikudy main road. Ext.P3 is a rough sketch showing the property of the petitioners and the six links wide private pathway. There was a Suit on the basis of obstruction by neighbours and Ext.P4 is the Decree therein. Petitioners have a compound wall around their property covering the aforesaid 7.31 cents of land. It is stated that some

of the neighbours had filed a petition before the Tahsildar, Kanayannor Taluk against the lie of the wall alleging encroachment to the said six links wide pathway. The Tahsildar came to the conclusion that the same is not a public land and it is only a private pathway (Ext.P5). It is the case of the petitioners that the compound wall was constructed well within their property and the same is not exceeded to the six links pathway as alleged. On the basis of a complaint by certain others, first petitioner had approached this Court by filing W.P.(C) No.36993/04 and Ext.P6 is the Judgment therein. Thereunder, this Court directed the first petitioner to appear before the Panchayat with a view to have an opportunity of hearing. It is the further case of petitioners that even though the first petitioner appeared before the respondent Panchayat as directed and submitted a petition, the Panchayat did not proceed further in the matter. Ext.P7 is the petition submitted by first petitioner. Ext.P8 is the order passed in another Writ Petition filed for police protection. It was, while so, that Ext.P9 is issued by the

Panchayat directing to demolish the wall without measuring the property of the petitioners or the neighbours.

2. I heard the learned counsel appearing for the parties, including the learned Government Pleader appearing for the additional second respondent, who is the Tahsildar. Counsel for the respondent Panchayat does not dispute the fact that the property of the petitioners or the additional respondents were not got measured. In regard to the need for such a measurement, there is no serious dispute among the parties. According to the parties, measurement can be ordered to be taken by the second respondent. In such circumstances, the Writ Petition is disposed of as follows:

The additional second respondent is the Tahsildar, Taluk Office, Kochi. There will be a direction to the additional second respondent to carry out measurement of the property of the petitioners in question and also that of additional respondents 3 and 4 and to demarcate the properties and submit a Report to the first respondent, showing the extent of encroachment, if any,

and also as by whom the encroachment, if any, is committed. The survey and measurement will be done on 20th August, 2007 at 11 A.M. in the presence of the petitioners and additional respondents 3 and 4. It is made clear that no separate notice need be given either to the petitioners or to the additional respondents 3 and 4. The Report shall be given on or before 10.9.2007. Upon receipt of the Report by the Panchayat, a copy of which shall be made available to the petitioners and also to the additional respondents 3 & 4 by the Panchayat, if it is found that the petitioners have committed encroachment, the petitioners will surrender the land which is found to be excess in the measurement. If they do not surrender the land, action will be taken against them in accordance with law. Likewise, if it is found that the additional respondents 3 and 4 are in possession of encroached land and in case they do not surrender on their own, action will be taken against them in accordance with law.

kbk. **K. M. JOSEPH, JUDGE**